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Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Status of 800 MHz Band Reconfiguration
WT Docket 02-55 (Revised)

Sprint Nextel Corporation ("Sprint Nextel") hereby respectfully comments on the 800 MHz Transition Administrator's ("TA") Quarterly Report, submitted to the Federal Communications Commission ("Commission") on November 10, 2005. Sprint Nextel also comments generally on the status of 800 MHz band reconfiguration.

Sprint Nextel is doing everything within its control to make 800 MHz band reconfiguration progress as quickly and as efficiently as possible. At the same time, however, there are a number of outside factors which impact Sprint Nextel's ability to unilaterally control band reconfiguration and perform this unprecedented undertaking within the time periods established by the TA.

As discussed further below, the TA established, and the Commission approved, a heavily weighted first retuning "wave" which contains the Nation's largest number of licensees operating in the Nation's most populous and most complex licensing environments. Instead of a "ramp up" period, these critical markets are serving as the pilot markets for the rest of the country, while the regulatory environment and processes necessary to implement band reconfiguration have been constantly changing. For example, the TA has issued at least twenty forms, directives, policy changes or pronouncements since April 2005, all of which have affected ongoing negotiations with incumbent licensees. The Commission itself has also significantly impacted the timing of Frequency Retuning Agreements ("FRAs") between Sprint Nextel and Wave 1 ESMR and EA licensees with its October 2005 release -- more than three months into the Wave 1 negotiating period -- of a Memorandum Opinion and Order substantially modifying the retuning rights and responsibilities of these licensees.

The disproportionate size and complexity of Wave 1, along with the TA and the Commission's changing regulatory requirements and processes, have

slowed the negotiation process for many 800 MHz incumbent licensees, especially public safety communications systems. Sprint Nextel assures the Commission that it will continue to devote all necessary resources to achieving signed FRAs with as many Wave 1 incumbents as possible by the end of the mandatory negotiations period. *Sprint Nextel maintains the personnel and supporting resources required to complete FRAs with any incumbent licensees that desire in good faith to do so.* Having said this, however, Sprint Nextel reminds the Commission that Sprint Nextel does not and cannot unilaterally control the negotiations process; a negotiation – whether mandatory or voluntary – is just that and requires ultimately an agreement between two independent parties.

The Commission established an 800 MHz reconfiguration process that puts all of the compliance obligations on Sprint Nextel. The reality is, however, that not all 800 MHz incumbents feel the same pressure as Sprint Nextel does to get band reconfiguration completed quickly. Some 800 MHz incumbent licensees view themselves as competitors of Sprint Nextel; a number of them opposed (and continue to oppose) band reconfiguration and thus feel little incentive to cooperate or to retune their facilities. Some private wireless and public safety incumbent licensees have been faced with unprecedented natural disasters and Homeland Security alerts which have arguably placed more pressing demands on their attention and resources than the TA's negotiation schedule. Some public safety licensees have not experienced interference to their systems and therefore may not feel the same pressure to implement band reconfiguration as quickly as the TA or the Commission anticipated.

Sprint Nextel continues to be fully committed to fulfilling its responsibilities in the 800 MHz band reconfiguration process. In Wave 1, all parties have encountered unexpected obstacles as well as the learning curve inherent in any new project. Given these experiences to date, vigilant oversight and involvement by the Commission is necessary to ensure that this vital national initiative be performed as smoothly and as cost effectively as possible. With that in mind, Sprint Nextel provides the following comments on the status of 800 MHz reconfiguration.

I. Status of 800 MHz Band Reconfiguration

The Commission ordered 800 MHz band reconfiguration to be performed within three years.¹ Within this period, Sprint Nextel is ordered to perform band

¹ *Improving Public Safety Communications in the 800 MHz Band; Consolidating the 800 and 900 MHz Industrial/Land Transportation and Business Pool Channels*, Report and Order, Fifth Report and Order, Fourth Memorandum Opinion and Order, and Order, 19 FCC Rcd 14969 at para. 347 (2004).

reconfiguration in two distinct Phases. First, in Phase I Sprint Nextel is ordered to retune, in the 55 NPSPAC regions on a region-by-region basis, all non-Sprint Nextel, non-Southern LINC incumbent licensees on 806-809 MHz/851-854 MHz (Channels 1-120) to comparable facilities and channel assignments in the 800 MHz band. In Phase II Sprint Nextel is required to retune all existing NPSAC (public safety) licensees on 821-824 MHz/866-869 MHz to new channel assignments on the newly vacated 1-120 channels.

The Commission appointed an independent TA to oversee this massive project. Among the TA's first delegated responsibilities was the formulation of a plan detailing when band reconfiguration would commence in each of the fifty-five NPSPAC regions. The TA adopted a Regional Prioritization Plan ("RPP") on January 31, 2005, which the Wireless Telecommunications Bureau approved on March 11, 2005. The TA assigned each of the fifty-five NPSPAC regions to one of four basic "prioritization waves" with staggered starting dates. The first wave began on June 27, 2005, and the second wave on October 3, 2005.² Within each wave is a three-month voluntary negotiation period, followed by a three-month mandatory negotiation period. Thus, the conclusion of the Wave 1 negotiation period is December 26, 2005. If retuning agreements are not reached during these negotiation periods, parties are required to participate in TA directed Alternative Dispute Resolution ("ADR") procedures. If agreements still cannot be reached with the assistance of the TA, the TA is required to submit those cases to the Commission for its review and assistance.

Despite the numerous obstacles outlined above, and the timing problems that have resulted therefrom, Sprint Nextel continues to fully support 800 MHz band reconfiguration. In particular, Sprint Nextel directs the Commission's attention to the following information:

- As of the above date, Sprint Nextel's records indicate that *more than one-third* of all Phase I (Channels 1-120) 800 MHz incumbent licensees across all four Phase I retuning negotiation waves have entered into signed FRAs with Sprint Nextel.
- *Forty-three percent* of all Wave 1 licensees have entered into signed FRAs with Sprint Nextel, while *an additional 21 percent of Wave 1 incumbents* have reached agreement with Sprint Nextel on all principal terms of their prospective FRAs and are in the final stages of negotiating definitive agreements.

² Wave 3 is scheduled to begin on January 3, 2006 and Wave 4 on April 3, 2006.

- Approximately 60 percent of the Business and Industrial and Land Transportation ("B/ILT") and Specialized Mobile Radio ("SMR") Wave 1 incumbents have signed FRAs with Sprint Nextel, while an additional 15 percent of the remaining B/ILT and SMR incumbents have reached agreement with Sprint Nextel on all principal retuning terms of their prospective FRAs.
- Given these most recent retuning results, Sprint Nextel projects that *more than 80 percent* of all Wave 1 licensees either will have entered into signed FRAs with Sprint Nextel, or reached agreement with Sprint Nextel on all material terms of a prospective FRA by the December 26, 2005 conclusion of the Wave I mandatory negotiation period.

Notwithstanding this substantial progress, Sprint Nextel recognizes that reaching signed FRAs in just Wave 1 is taking somewhat longer than the TA may have anticipated when it established its RPP. In this regard, the TA advised the Commission in its November 10 Quarterly Report that a "significant number" of Wave 1 incumbents may not complete their negotiations with Sprint Nextel and enter into definitive, signed FRAs by the end of the mandatory negotiation period. Sprint Nextel's own projections indicate that as many as 74 incumbents – both private and public safety licensees – may not reach definitive FRAs by December 26, 2005. The TA provided no factual explanation for this expected outcome. As noted above, Sprint Nextel believes these timing problems stem from three basic realities, as discussed below.

A. Wave 1 is the Largest and Most Complex Wave to be Retuned

The TA's projection that a significant number of Wave 1 incumbents will not reach FRAs by the end of the Wave I mandatory retuning period reflects the simple fact that Wave I is by far the largest of the four Phase I "waves" in terms of the number of incumbents that must be retuned.³ At the same time, Wave 1 also contains many of the more complex Phase I systems, often located in the most populous and spectrum-congested areas of the country.⁴ Sound project planning would typically dictate that the first wave of an initiative of this scope and complexity include a "ramp-up period" to allow a manageable number of "pilot" retunees, their equipment vendors and advisors to gain substantial

³ Sprint Nextel calculates that there are 496 retuning transactions in Wave 1, 383 retuning transactions in Wave 2 and 326 retuning transactions in Wave 3. Thus, Wave 1 is more than twenty-five percent larger than the next largest wave.

⁴ Wave 1 encompasses the entire East Coast, from Maine to Southern Virginia, as well as Western States, Hawaii, Oregon, Northern California, Nevada, Utah and Colorado, and Midwestern states Wisconsin, Illinois and Indiana.

experience in the retuning planning and negotiation process and to have the opportunity to share that experience with other incumbents. Sprint Nextel notes that it expressed concern to the TA that Wave 1 contained an excessive number of the more challenging incumbents during the TA's formulation of its 800 MHz Regional Prioritization Plan. Despite Sprint Nextel's concerns, the TA recommended and the Commission approved a prioritization plan in which Wave 1 is the largest and most complex of the all of the Phase I retuning waves. Real world experience over the past six months has borne out concerns that completing Wave 1 within the time period specified by the TA may indeed prove unrealistic.

B. The Retuning Process is Continually Evolving

While Sprint Nextel has had the opportunity to aggregate substantial retuning experience as a result of negotiating to date more than 300 FRAs, the FRA negotiating process remains new and unique for individual 800 MHz incumbent licensees. At this still-early stage of the overall 800 MHz reconfiguration process, little guiding precedent has been established. This leaves each incumbent licensee and Sprint Nextel to essentially start negotiating anew without the full benefit of settled precedent on prior comparable retuning issues. In fact, all parties in the Wave I retuning negotiations process have had to adapt on the fly to new and evolving regulatory policies and procedures. For example, during Wave 1, the TA has issued at least 20 separate statements of policies or procedures affecting FRA negotiations, each ranging from two pages to 60 pages.⁵

⁵ 800 MHz Reconfiguration Handbook (April 2005), 800 MHz Quick Reference Guide (April 2005), Point of Contact Form (April 2005), EA Election Press Release (May 2005), EA Election Form (May 2005), Revised 800 MHz Reconfiguration Handbook (June 2005), Guard Band Press Release (June 2005), Guard Band Election Form (June 2005), Expansion Band Press Release (June 2005), Expansion Band Election Form (June 2005), Frequency Proposal Report Fact Sheet (June 2005), Guidance Regarding Transition Administrator's Review Rights of Licensee Records (July 2005), Mutual Aid and Interoperability Fact Sheet (August 2005), Planning and Reconfiguration Fact Sheet (August 2005), Funding for Reconfiguration Fact Sheet (August 2005), Expansion Band Fact Sheet (August 2005), Educational Reimbursement Policy (September 2005), Incumbent Labor Rate Reimbursement Policy (October 2005), Cost Classification Policy (October 2005), Alternative Dispute Resolution Plan (November 2005), ADR Request for Mediation Form (November 2005), ADR Waiver of Privilege and Confidentiality Form (November 2005), ADR Authorized For Mediation Form (November 2005), Request for Planning Funding Forms (Instructions, Template, Large, Medium and Small System Templates) (November 2005).

Although these statements and documents should ultimately facilitate retuning negotiations, they are further evidence of the fact that Wave 1 is essentially a pilot program in which Sprint Nextel, the TA, incumbent licensees and the Commission itself are all participants in an evolving process of developing the necessary guidance, systems and experience to reconfigure the entire 800 MHz Land Mobile Radio spectrum. Given these facts, it should come as no surprise that some Wave 1 licensees have not progressed through the retuning negotiation process to sign and execute FRAs as quickly as the schedule established by the TA may have anticipated.

The oversight functions that the TA performs have also added to the complexity and administrative costs of the band reconfiguration process. The TA reviews every proposed FRA before it is signed by the parties, including a review of the costs of each planned retune and also performs an audit function after the transaction is completed. In cases where the TA disagrees or questions the terms and cost estimates of the FRA, the TA typically requests further information from the parties. While Sprint Nextel attempts to anticipate these concerns based on its experiences with the TA on earlier transactions, fulfilling the TA requirements often adds delay to the FRA process and is impacting the speed and volume of transactions that Sprint Nextel can deliver to the TA. At the same time, the TA also serves as the facilitator for transactions that may not be progressing according to its schedule as well as the arbitrator in the case of unresolved retuning negotiation disputes.

As noted above, approximately 70 negotiations may need to be submitted to ADR under the TA's auspices. This level of both pervasive oversight and substantive decision-making vested in one entity is unprecedented in a Commission-mandated retune of incumbent licensees. Nextel suggests that imbuing the TA with these multifaceted and potentially inconsistent responsibilities requires the Commission to be more actively involved in overseeing the fairness and efficiency of the 800 MHz reconfiguration process. The Commission must assure that the TA performs each of these responsibilities fairly and properly, and that its charges are both properly documented and fully consistent with the Commission's expectations as to the scope of the TA's authority.

C. The Commission's MO&O Has Created Further Uncertainty

The Commission's own actions have also added additional complexity and uncertainty to Wave 1 retuning negotiations. The Commission's Memorandum Opinion and Order ("MO&O"), released on October 5, 2005 – nearly three months after Wave I began – provided, on reconsideration, *substantial new rights* to non-Sprint Nextel Economic Area ("EA") and "ESMR" licensees who choose to

retune to the ESMR block or to the Guard Band.⁶ These changes impact every ongoing negotiation with EA and ESMR licensees, and will likely expand the number of EA licensees who may seek to retune their facilities, thereby creating *more* retuning transactions to be undertaken. In addition, the Commission may have even unintentionally impacted signed FRAs with non-EA, non-ESMR licensees. For example, one licensee with a signed FRA could now be unable to voluntarily retune its system to the Guard Band because the Commission has expanded the rights of EA and ESMR licensees to retune their facilities in a manner that potentially limits the availability of Guard Band channels for non-EA and non-ESMR retunees.

The Commission's implementing processes for the changes announced in the MO&O exacerbate this uncertainty. In the MO&O, Commission directed the TA to open a twenty-day window for licensees to re-file their upper band retuning elections. The MO&O, however, has not yet been published in the Federal Register. As a result, the TA appears to be waiting to initiate the new election opportunity for EA and ESMR licensees. As described above, this has created continuing uncertainty for Sprint Nextel and numerous licensees – many of whom will thus be unlikely to enter into signed FRAs by the end of the Wave 1 negotiating period.

For all of these reasons, Sprint Nextel recommends that the previously designated start date of 800 MHz band reconfiguration (June 27, 2005), be readjusted to reflect the recent issuance of the MO&O. The appropriate start date for 800 MHz band reconfiguration should be adjusted to begin sixty days after publication of the MO&O in the Federal Register.

D. The Commission's Own Established Processes Contemplate That Agreements May Not Be Reached by the End of the Mandatory Negotiation Period and May be Referred to ADR and the Commission

Sprint Nextel respectfully suggests that the possibility that there will be a "significant number of incomplete agreements at the end of the Wave 1 mandatory negotiation period on December 26, 2005,"⁷ should have been expected by both the TA and the Commission given the process that the TA and Commission adopted and the regions selected for Wave 1. First, the Commission established a "voluntary" negotiation period, followed by a "mandatory" negotiation period, followed by an ADR process as steps to ensure that incumbent licensees and Sprint Nextel reach definitive FRAs for retuning affected incumbent facilities. Given the front loaded nature of Wave 1, it should

⁶ Because reconsideration petitions have been pending since March 2005, EA/ESMR licensees have had little incentive to enter into definitive agreements while the regulatory uncertainty over this issue remained pending.

⁷ TA Quarterly Report at page 1.

be expected that more licensees will avail themselves of the entire negotiation period, plus the ability to use the ADR process to secure as favorable a retuning agreement as possible. For all of the reasons discussed above, there will probably be a larger number of incomplete retuning negotiations at the end of the mandatory negotiating period than the TA may have anticipated.

II. Status of Requests for Planning Funding

Sprint Nextel also takes this opportunity to update the Commission regarding the progress of public safety Requests for Planning Funding (RPF). In April 2005, the TA issued its 800 MHz Band Reconfiguration handbook, which required that Requests for Planning Funding be submitted no earlier than 75 days from the start of the applicable voluntary negotiation period.⁸ The TA's Handbook also require that RPFs provide sufficient detail to justify the proposed planning funding.

To date, Sprint Nextel has received 45 Requests for Planning Funding.⁹ Of these, at least 10 were filed for Phase II NPSPAC retuning planning and were therefore filed prematurely; *i.e.*, in advance of the TA established 75-day "window" prior to the start of the Phase II NPSPAC retuning period.¹⁰

Of the remaining 35 RPFs, all parties including Sprint Nextel, the incumbent and its vendors have reached agreement on 14 requests and these are being finalized. Two of those RPFs have been memorialized in signed Agreements and approved by the TA, including one RPF for a statewide public safety communications system. Significantly, in almost every one of these cases, the parties agreed to consolidate their RPFs within an overall FRA – thereby eliminating the need for the parties to execute a separate planning funding contract.

⁸ Thus, the earliest that a Wave 1, NPSPAC (Phase II) licensee could submit a Request was November 18, 2005.

⁹ Five other filings were "informational", provided no details and are entirely incomplete.

¹⁰ Early in the relocation process, the TA had specifically directed Sprint Nextel to focus on transactions in current waves and informed licensees that premature Requests might not be considered. Sprint Nextel honored that directive and did not actively pursue negotiations that fell outside of the specified window for negotiation. *Going forward, Sprint Nextel will quickly address any Request for Planning Funding that it receives regardless of the Wave or Phase in which it would apply.*

Sprint Nextel has reviewed the remaining submitted RPFs and believes that they do not contain the detail required to enable Sprint Nextel to execute a RPF Agreement that the TA would approve and disburse planning funding.¹¹ Sprint Nextel's funding of 800 MHz band reconfiguration is subject to a potential "anti-windfall" payment at the end of band reconfiguration; accordingly, Sprint Nextel is placed in a position where it is a steward of public funds. Sprint Nextel is subject to Federal laws governing the use of federal funds which could make it potentially liable for being part of a contract where Federal funds are later found to be unnecessary. Sprint Nextel also believes that these laws apply equally to the TA, equipment manufacturers and licensees. As a result, Sprint Nextel must be cautious and protective of the funds that it provides to accomplish band reconfiguration and must not knowingly participate in contracts that would likely be unjustifiable to the TA, outside auditors, the Commission or any future Federal investigation.

Sprint Nextel emphasizes, however, that it has been actively negotiating since at least August with the TA and the leading equipment vendor involved in RPFs, Motorola, to resolve inadequacies in at least 17 essentially identical RPFs (except for the amount of funding sought) in which Motorola would carry out the planning functions. These requests, when first submitted (and in some cases resubmitted), were demonstrably deficient in providing both an acceptable level of detail and/or supporting documentation necessary to justify the scope of proposed planning activities and the proposed funding requirement. Most of these RPFs provided little-to-no indication of what the planning funds would be used for, and the funding requests appeared to be well outside the anticipated range of planning costs for the systems involved. In still other submissions, the amounts requested even exceeded the likely amount of the total retuning cost. For example, a school district on the West Coast has requested nearly \$35,000 for planning the retune of a single site, single frequency 800 MHz system. The entire retune will likely cost under \$15,000.

Sprint Nextel notes that just two weeks ago Motorola, the TA and Sprint Nextel reached agreement on a RPF template which was made available on the TA's website last week. We anticipate that these templates will provide all parties, including vendors and licensees, better guidance and thereby facilitate RPF approval on a much faster timeframe, provided that future RPFs fit the agreed-upon templates. In other words, a request that provides all of the information required by the template should be complete and able to be reviewed quickly by Sprint Nextel and subsequently the TA. Sprint Nextel will provide the Commission with an update on the status of Requests for Planning Funding by the end of December 2005.

¹¹ Sprint Nextel has contacted each licensee that has submitted such a RPF and has apprised them of its status and informed them of any additional information that is required to move the request forward.

III. Conclusion

Adoption of the 800 MHz Report and Order was the result of an unprecedented public-private partnership between public safety, private wireless and Sprint Nextel. All parties came together to propose a comprehensive solution to the vexing problem of interference to critical public safety communications. Adoption of the Report and Order, however, was truly just the beginning. Implementation of the Commission's decisions will require vigilance by all parties – the Commission, Sprint Nextel, public safety, private wireless, other commercial carriers, the TA, and equipment vendors to ensure that this critical project be performed efficiently, fairly and with sensitivity towards the extensive costs and impacts on critical wireless networks. To do so, all parties must be cognizant of each other's unique perspectives to accomplish 800 MHz band reconfiguration with as little disruption as possible.

Sprint Nextel is pleased to provide its perspective and update on the 800 MHz band reconfiguration process. Should you or your staff have any further questions, please do not hesitate to contact me.

Respectfully submitted,

/s/

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